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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/532,491

04/25/2005

Joachim Guettinger

R.305861

4359

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03/08/2006

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EXAMINER

PRESTON, ERIK D

ART UNIT

PAPER NUMBER

2834

DATE MAILED: 03/08/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

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# Office Action Summary

Application No.

10/532,491

Applicant(s)

GUETTINGER ET AL.

Examiner

Erik D. Preston

Art Unit

2834

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 08 February 2006.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 11-30 is/are pending in the application.
- 4a) Of the above claim(s) 30 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 11-29 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 4/25/2005.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

**DETAILED ACTION**

***Election/Restrictions***

Applicant's election without traverse of Group I in the reply filed on 2/28/2005 is acknowledged.

Claim 30 is withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected Group II, there being no allowable generic or linking claim.

Election was made **without** traverse.

***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

A broad range or limitation together with a narrow range or limitation that falls within the broad range or limitation (in the same claim) is considered indefinite, since the resulting claim does not clearly set forth the metes and bounds of the patent protection desired. See MPEP § 2173.05(c). Note the explanation given by the Board of Patent Appeals and Interferences in *Ex parte Wu*, 10 USPQ2d 2031, 2033 (Bd. Pat. App. & Inter. 1989), as to where broad language is followed by "such as" and then narrow language. The Board stated that this can render a claim indefinite by raising a question or doubt as to whether the feature introduced by such language is (a) merely exemplary of the remainder of the claim, and therefore not required, or (b) a required feature of the claims. Note also, for example, the decisions of *Ex parte Steigewald*, 131 USPQ 74 (Bd. App. 1961); *Ex parte Hall*, 83 USPQ 38 (Bd. App. 1948); and *Ex parte Hasche*, 86 USPQ 481 (Bd. App. 1949). In the present instance, claims 26-29 recite the

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broad recitation "wherein the electrical machine is used in a vehicle", and the claim also recites "in particular as a drive for electrically actuated accessories, in particular as a drive for windshield wipers" which is the narrower statement of the range/limitation.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 11, 12, 17-24 & 26 are rejected under 35 U.S.C. 102(b) as being anticipated by Kluck (US 4596941 supplied by applicant).

With respect to claim 11, Kluck teaches an electrical machine comprising: A housing for a machine, the housing including a housing body (Col. 2, Lines 36-38) and a housing cap (Fig. 1, #10), a brush holder (Fig. 1, #13 & 14) disposed in the housing for holding brushes (Fig. 1, #11 & 12), and an elastic region (Fig. 1, #24) in the housing cap which elastic region enables positioning of the brush holder relative to the commutator from outside the housing (Col. 3, Lines 54-61).

With respect to claim 12, Kluck teaches the machine of claim 11, wherein the elastic region is embodied in the housing cap.

With respect to claims 17 & 18, Kluck teaches the machine of claims 11 & 12, wherein the elastic region is formed integrally with the housing cap.

With respect to claims 19 & 20, Kluck teaches the machine of claims 17 & 18, wherein the elastic region is formed by a wavelike structure (as seen in Fig. 7, there is a trough (#50) in the middle of the elastic region).

With respect to claims 21 & 22, Kluck teaches the machine of claims 17 & 19, wherein the elastic region is embodied annularly and surrounds a positioning portion (Fig. 1, #23).

With respect to claims 23,24 & 26, Kluck teaches the machine of claims 11,12 & 17, wherein the electrical machine is watertight (Col. 1, Lines 37-42).

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 13-16 & 25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kluck (US 4596941 supplied by applicant).

With respect to claims 13 & 14, Kluck teaches the machine of claims 11 & 12, wherein the elastic region is secured to the housing cap, but it does not specifically teach that the elastic region is an elastomeric element. However, it would have been obvious to one of ordinary skill in the to form the elastic region of Kluck from an elastomeric plastic since Kluck teaches that the housing cap of made of a plastic (Col. 1, Lines 54-58) that can flex, and an elastomeric plastic would fulfill that requirement. It also would have been obvious to form the elastic region from an elastomer since it has

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been held that one of ordinary skill in the art at the time the invention would choose a suitable and desirable material, because it would be within the general skill of a worker in the art to select a material on the basis of its suitability for the intended use as a matter of obvious design choice (In re Leshin, 227 F.2d 197, 125 USPQ 416 (CCPA 1960)).

With respect to claims 15 & 16, Kluck teaches the machine of claims 13 & 14, wherein the elastomer element is an elastomer diaphragm (Col. 1, Lines 52-54).

With respect to claim 25, Kluck teaches the machine of claim 13, wherein the electrical machine is watertight (Col. 1, Lines 37-42).

Claims 27-29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hayashi (US 2002/0175573) in view of Kluck (US 4596941 supplied by applicant).

Hayashi teaches a windshield wiper motor (Fig. 15, #1) for use in a vehicle, but it does not teach the brush holder and elastic region of claims 11-13. However, Kluck teaches the brush holder and elastic region of claims 11-13. It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the brush holder of Hayashi in view of the brush holder and elastic region as taught by Kluck because it provides a means for simply assembling an electric machine without requiring any tools (Kluck, Col. 1, Lines 37-42).

### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. US 672604, US 2194211, US 3450915, US 3466481, US

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4381468, US 4409508, US 4774754, US 4866322, US 5004943, US 5172465, US 5495134 & US 6628036

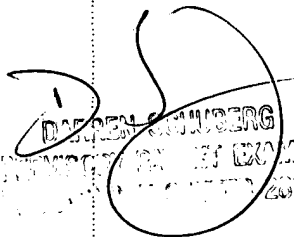
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Erik D. Preston whose telephone number is (571)272-8393. The examiner can normally be reached on Monday through Friday 8-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Darren Schuberg can be reached on (571)272-2044. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



02/22/2006



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